

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
RICARDO MANUEL DURAN,  
Defendant.

No. 2:20-cr-00228-JAM

**ORDER DENYING DEFENDANT'S MOTION  
TO SUPPRESS**

Before the Court is Ricardo Manuel Duran's ("Defendant" or "Duran") Motion to Suppress. Mot. to Suppress, ECF No. 17. Defendant moves to suppress all the evidence obtained during the October 20, 2020 search of his person and car. See generally id. The Government opposed this motion, Opp'n, ECF No. 21, to which Defendant replied, Reply, ECF No. 22. The Court heard arguments on the motion and testimony from Police Officer Rogers at an evidentiary hearing on September 21, 2021. For the reasons set forth below, Defendant's motion is denied.

I. FACTUAL BACKGROUND

On the evening of October 20, 2021, Defendant was parked on

1 the side of a rural road on Industrial Avenue in Lincoln,  
2 California. Lincoln Police Dept. Crime Report ("Police Report"),  
3 ECF No. 19-1. At approximately 10:19 pm, Officer Rogers of the  
4 Lincoln Police Department pulled up behind Defendant's vehicle.  
5 Id. Defendant informed the officer that he was stopped because  
6 his car had overheated. Id. Noticing Defendant's tattoos,  
7 Officer Rogers asked Defendant if he was affiliated with a gang.  
8 Id. Defendant stated he was. Id. The officer then asked if  
9 Defendant was on probation or parole to which Defendant responded  
10 he was on federal probation. Id. The officer followed up by  
11 asking if Defendant had anything illegal on him. Id. Defendant  
12 responded that he had a little bit of methamphetamine in his  
13 pocket. Id. Officer Rogers then conducted a records check,  
14 which revealed Defendant was on felony probation and had an  
15 active federal warrant. Id. Officer Rogers removed Defendant  
16 from the car, handcuffed, and searched him. Id. Methamphetamine  
17 and heroin were found on his person. Id. A semi-automatic  
18 handgun and methamphetamine pipe were found in his car. Id.

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20 II. OPINION

21 The Fourth Amendment protects the right to be free from  
22 unreasonable searches or seizures. U.S. Const. Amend. IV. "A  
23 seizure conducted without a warrant is 'per se unreasonable  
24 under the Fourth Amendment—subject only to a few specifically  
25 established and well delineated exceptions.'" United States v.  
26 Hawkins, 249 F.3d 867, 872 (9th Cir. 2001) (quoting Minnesota v.  
27 Dickerson, 508 U.S. 366, 372 (1993)). A person is "seized" for  
28 purposes of the Fourth Amendment when "by means of physical

1 force or show of authority, his freedom of movement is  
2 restrained." United States v. Mendenhall, 446 U.S. 544, 552  
3 (1980). "A police officer may make a seizure by a show of  
4 authority and without the use of physical force, but there is no  
5 seizure without actual submission." Brendlin v. California, 551  
6 U.S. 249, 254 (2007) (citing California v. Hodari D., 499 U.S.  
7 621 (1991)). Evidence obtained as a direct or indirect result  
8 of an unlawful search or seizure is inadmissible as "fruit of  
9 the poisonous tree." United States v. McClendon, 713 F.3d 1211,  
10 1215 (9th Cir. 2013).

11 Defendant bears the burden of showing a seizure occurred by  
12 a preponderance of evidence. See United States v. Matlock, 415  
13 U.S. 164, 177 n.14 (1974) (noting that the burden of proof at  
14 suppression hearings is no greater than a preponderance of the  
15 evidence); United States v. Cayman, 404 F.3d 1196, 1199 (9th  
16 Cir. 2005) (explaining it is "a defendant's burden to establish  
17 a Fourth Amendment violation"). The government then has the  
18 burden of justifying the warrantless seizure under one of the  
19 few specifically established exceptions to the warrant  
20 requirement. United States v. Huguez-Ibarra, 954 F.2d 546, 551  
21 (9th Cir. 1992); see also United States v. Guevara, 745  
22 F.Supp.2d 1039, 1043 (N.D. Cal. 2010) ("once [defendant]  
23 demonstrates that a warrantless search or seizure occurred, the  
24 burden shifts to the government to demonstrate a justification  
25 or exception to the warrant requirement.")

26 Defendant claims Officer Rogers closed his driver-side door  
27 and ordered him to place his hands on the wheel, to which he  
28 complied, after Defendant informed him he was waiting for his

1 car to cool down. Decl. of Ricardo Duran, ECF No. 17-1.  
2 Because an order to place one's hands on the steering wheel, if  
3 complied with, constitutes a seizure, see United States v.  
4 Reyes, 255 Fed.Appx. 699, 701 (9th Cir. 2007), and Officer  
5 Rogers did not have reasonable suspicion at that point,  
6 Defendant argued the seizure was unlawful and all evidence  
7 obtained as a result should be suppressed. Mot. to Suppress at  
8 3. The Government denied that Officer Rogers ordered Defendant  
9 to place his hands on the wheel. See Opp'n at 3. Accordingly,  
10 the Court held an evidentiary hearing to resolve this factual  
11 dispute. Officer Rogers testified at this hearing and was cross  
12 examined by counsel for Defendant. Duran did not testify.

13 Weighing Officer Rogers' testimony against Defendant's  
14 declaration, the Court finds Officer Rogers' version of events  
15 to be more credible and that he did not order Defendant to place  
16 his hands on the wheel. See United States v. Thoms, 684 F.3d  
17 893, 903 (9th Cir. 2012) (noting "live testimony is the bedrock  
18 of the search for truth in our judicial system" and "where an  
19 unresolved factual dispute exists, demeanor evidence is a  
20 significant factor in adjudging credibility.") While Defendant  
21 argued that the Court should find otherwise, the totality of the  
22 circumstances suggests that Officer Rogers' testimony that this  
23 was a consensual encounter and at no time prior to his  
24 conversation with Defendant did he seize Defendant, is more  
25 accurate than Defendant's version set forth in his declaration.  
26 Thus, the Court finds Defendant has not met his burden of  
27 demonstrating he was unlawfully seized and suppression of the  
28 evidence is not warranted.

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2                   III. ORDER  
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4                   For the reasons set forth above, the Court DENIES  
5                   Defendant's Motion to Suppress.  
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7                   IT IS SO ORDERED.  
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9                   Dated: September 23, 2021  
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11                     
12                   JOHN A. MENDEZ,  
13                   UNITED STATES DISTRICT JUDGE  
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